

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

ROBERT VITO COMITO,

Petitioner,

vs.

STATE OF NEVADA, *et al.*,

Respondents.

Case No. 2:13-cv-01048-JAD-VCF

**ORDER**

This closed action is a *pro se* petition for a writ of habeas corpus filed by a federal prisoner. This action was dismissed without prejudice on October 15, 2013, based on petitioner's failure to comply with the rules and orders of the court, including the failure to pay the filing fee and update his address. Doc. 13. Judgment was entered on October 16, 2013, and petitioner's appeal of that dismissal was dismissed for failure to prosecute it. Docs. 14, 20, 22. Petitioner has filed a motion to reopen this case, which the court construes as a motion for reconsideration. Doc. 18. He claims that he was transferred to different prison facilities and never received the court's order directing him to pay the filing fee. *Id.* The court finds that petitioner's explanation is an adequate ground for vacating the prior dismissal without prejudice.

However, this action must be dismissed for the independent reason that it is duplicative of petitioner's habeas petition filed in this Court at Case No. 2:13-cv-550-RCJ-PAL, in which petitioner challenges his federal conviction and sentence pursuant to 28 U.S.C. § 2255. In the

1 petition filed in the instant case, petitioner also challenges his federal conviction and sentence.  
2 While petitioner mentions the existence of charges filed against him by the State of Nevada, he has  
3 not been convicted of such charged offenses in the Nevada state courts. Rather, petitioner  
4 challenges the validity of his federal conviction and sentence. Thus, this case is duplicative of the  
5 action filed in Case No. 2:13-cv-550-RCJ-PAL. Accordingly, this case is dismissed with prejudice.  
6 To the extent that petitioner may seek to challenge a future state court conviction, he may do so by  
7 filing a habeas petition under 28 U.S.C. § 2254 after entry of a criminal judgment of conviction in  
8 state court and after exhausting all state court remedies.

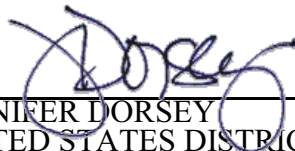
9 **IT IS THEREFORE ORDERED** that petitioner's motion for reconsideration (Doc. 18) is  
10 **GRANTED** and the Court's dismissal without prejudice (Docs. 13 & 14) is **VACATED**;

11 **IT IS FURTHER ORDERED** that this action is **DISMISSED WITH PREJUDICE** as  
12 duplicative of Case No. 2:13-cv-550-RCJ-PAL;

13 **IT IS FURTHER ORDERED** that no certificate of appealability shall issue as this ruling  
14 would not be debatable among jurists of reason;

15 **IT IS FURTHER ORDERED** that the Clerk of Court shall enter judgment accordingly.

16 Dated this 9th day of September, 2014.

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19 JENNIFER DORSEY  
20 UNITED STATES DISTRICT JUDGE  
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